



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,116	11/02/2006	Thomas Schlegl	P746-37	4089
7590 03/07/2011				
Robert C. Faber OSTROLENK, FABER, GERB & SOFFEN, LLP 1180 Avenue of the Americas New York, NY 10036-8403				
EXAMINER				
PARVINI, PEGAH				
ART UNIT		PAPER NUMBER		
1731				
MAIL DATE		DELIVERY MODE		
03/07/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,116

**Applicant(s)**

SCHLEGL ET AL.

**Examiner**

PEGAH PARVINI

**Art Unit**

1731

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 and 25-42 is/are pending in the application.
- 4a) Of the above claim(s) 16-22 and 40-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 25-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Any rejection and/or objection made in the previous Office Action and not repeated below is hereby withdrawn.

#### ***Response to Amendment***

This Office Action is in reply to the amendment/remarks filed 12/29/2010. After entry of this reply, claims 1-22 and 25-42 are pending in this application with claims 16-22 and 40-42 being withdrawn from further examination.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejection of **claims 1-9, 14-15, 26-30, 35-36, and 38-39** under 35 U.S.C. 103(a) as being unpatentable over Katsuhiro et al. as generally presented in the previous Office action is proper and stands.

The rejection of **claims 10-11** under 35 U.S.C. 103(a) as being unpatentable over Katsuhiro et al. as applied to claim 1 above and further in view of Schmid et al. as generally presented in the previous Office action is proper and stands.

The rejection of **claims 12-13 and 37** under 35 U.S.C. 103(a) as being unpatentable over Katsuhiro et al. as applied to claim 1 above and further in view of Schmid et al. in view of Ostertag et al. as generally presented in the previous Office action is proper and stands.

The rejection of **claims 25 and 31-34** under 35 U.S.C. 103(a) as being unpatentable over Katsuhiro et al. as applied to claim 1 above and further in view of Casey et al. as generally presented in the previous Office action is proper and stands.

### ***Response to Arguments***

Applicants' arguments filed 12/29/2010 have been fully considered but they are not persuasive.

Applicants have argued that Katsuhiro et al. is silent with respect to the distribution of thicknesses  $\Delta h$  and the specific surface area. They have, further, argued that the narrow distribution of thickness is an important property for obtaining aluminum pigments with optical properties closely resembling those of PVD pigments.

The examiner, respectfully, submits that Katsuhiro et al. disclose aluminum flakes being milled in the presence of a lubricant such as stearic acid and oleic acid; therefore, it is clearly expected from the aluminum flake pigment of Katsuhiro et al. to be at least partially coated with said lubricant in the absence of evidence proving otherwise. Thus, considering the fact that the claims also are drawn to aluminum

pigment at least partially coated with a lubricant, and the fact that the product of the reference results in an aluminum pigment at least partially coated with a lubricant, the characteristics/properties recited in items "a" through "e" of instant claim 1 are expected to follow from the composition of the reference unless applicants show, by way of tangible evidence, that the aluminum flake pigment of the reference does not possess the recited characteristics.

With reference to the dependent claims, applicants have argued that said rejections are not proper because the secondary references in each case do not remedy the, what applicants refer to as, the deficiency of Katsuhiko et al. reference.

The examiner, respectfully, submits that as noted above Katsuhiko et al. is seen to make the instant invention obvious; furthermore, the secondary references were used to address the limitations in the dependent claims as detailed out in the previous Office Action.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PEGAH PARVINI whose telephone number is (571)272-2639. The examiner can normally be reached on Monday to Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pegah Parvini/  
Examiner, Art Unit 1731

/Anthony J Green/  
Primary Examiner, Art Unit 1731